

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

LOUISIANA WHOLESALE DRUG CO.,	:	Civil Action No. 07 CIV 7343 (HB)
INC., et al.,	:	
	:	
v.	:	Hon. Harold Baer, U.S.D.J.
	:	ECF Case
	:	
	:	
SANOFI-AVENTIS US LLC and	:	
AVENTIS PHARMACEUTICALS, INC.	:	
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	:	
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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF**  
**MOTION FOR APPROVAL OF NOTICE TO THE CERTIFIED CLASS**

## I. INTRODUCTION

By Order dated April 8, 2008 (Doc. #109) this Court certified the proposed class in this antitrust case (the “Direct Purchaser Class”), appointed Louisiana Wholesale Drug Company, Inc. (“LWD”) as class representative, appointed Garwin Gerstein & Fisher LLP as Lead Direct Purchaser Class Counsel, and identified certain class claims and defenses.

Directly pertinent to this motion, the Court also directed Lead Direct Purchaser Class Counsel to

file with the Court a motion seeking approval of a form of individual Notice, for direction to each member of the Direct Purchaser Class by first class United States mail, of the certification of the Direct Purchaser Class. The Court hereby determines that such method is the best practicable under the circumstances. *See* Pl. Mem. at 25 n.24 (Doc. #88). Lead Direct Purchaser Class Counsel's proposed Notice shall comply in all respects with Fed. R. Civ. P. 23(c)(2)(B), and shall be accompanied by a form of order which, if signed and entered by the Court, would direct completion of the provision of such Notice within thirty (30) days of such entry.

Doc. #109 ¶ 10.<sup>1</sup>

Therefore, in accordance with the Court's directive, LWD hereby seeks approval of the form of Notice ("Class Notice") attached as Exhibit "A" to the Notice of Motion accompanying this brief. For the Court's convenience, a copy of the proposed Class Notice is also attached the proposed order.

If signed by the Court, the proposed order would also direct that the Class Notice be mailed to Direct Purchaser Class members no later than May 1, 2008,<sup>2</sup> and that Lead Direct Purchaser Class Counsel or its designee both monitor and report to the Court and counsel for Defendants, by way of Affidavit, any opt-out requests received.<sup>3</sup>

## **II. ARGUMENT**

Notice to the members of a class certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure is governed by Rule 23(c)(2)(B), which provides:

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<sup>1</sup>In the portion of LWD's Memorandum of Law in Support of Class Certification (Doc. #88) to which the Court cited, LWD explained, among other things, that "ascertaining the identity and mailing addresses of Class members will be simple" because, as Defendants admitted in their Answer, data provided by Defendants that identifies each direct purchaser of Arava. *See* Doc. #88 at 25 n.24 (citing Doc. #71 ¶ 17 ("Aventis admits . . . that the identity of persons who purchased 10 mg and 20 mg tablets directly from it during the period alleged in the Complaint may be ascertained from the transactional data Aventis has produced already to Louisiana Wholesale")). Defendants' data also shows the address for each such direct purchaser. As the Court recognized, there are 42 such purchasers, all of whom are businesses (not individual consumers). *See* Doc. #109 ¶ 2.

<sup>2</sup>Therefore, expedited treatment of this motion is requested.

<sup>3</sup>Lead Direct Purchaser Class Counsel are considering retaining a third-party claims administrator to effectuate the mailing of the Class Notice and the monitoring and reporting of opt-out requests received.

(2) *Notice.*

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

LWD's proposed Class Notice complies with these requirements in all respects. The 42 class members — all of whom are businesses of one kind or another (drug wholesalers, managed care entities, *etc.*) and none of whom are individual consumers — learn from the Class Notice why they are receiving it, and what they have to do to stay in the class or to opt out. The Class Notice describes the nature of the action (Part I.A.), what proceedings have taken place so far (Part I.B.), the definition of the certified class (Part II.A.), the identity of the class claims, issues and defenses (Part II.B.), that a class member may enter an appearance if desired (Part IV.1.), that the Court will exclude members of the class who so request (Part III.2), the time and manner for requesting exclusion (Part III.2; Part VI), and the binding effect of a class judgment (Part II.D.; Part III.1).

### III. CONCLUSION

For all of the foregoing reasons, plaintiff respectfully requests that the Court enter the Order proposed herewith, approving the Class Notice, and directing its mailing by May 1, 2008.

Dated: April 16, 2008

Respectfully submitted,

On the Brief:

Daniel Berger  
David F. Sorensen  
Eric L. Cramer  
Peter Kohn  
**BERGER & MONTAGUE, P.C.**  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3000

*Counsel for Louisiana Wholesale Drug Co.,  
Inc. and the Class*

John Gregory Odom  
Stuart Des Roches  
Charles F. Zimmer II  
**ODOM & DES ROCHES, LLP**  
Suite 2020, Poydras Center  
650 Poydras Street  
New Orleans, LA 70130  
(504) 522-0077

Adam Moskowitz  
Tucker Ronzetti  
**KOZYAK TROPIN &  
THROCKMORTON**  
2525 Ponce de Leon Blvd, 9th Fl.  
Miami, FL 33134  
(305) 372-1800

By: /s/ Anne K. Fornecker  
Bruce E. Gerstein  
Barry S. Taus  
Anne K. Fornecker  
**GARWIN GERSTEIN & FISHER LLP**  
1501 Broadway, Suite 1416  
New York, NY 10036  
(212) 398-0055

*Lead Counsel for Louisiana Wholesale Drug  
Co., Inc. and the Class*

David P. Smith  
W. Ross Foote  
**PERCY, SMITH & FOOTE, LLP**  
720 Murray Street  
P.O. Box. 1632  
Alexandria, LA 71309  
(318) 445-4480

Richard Kilsheimer  
Linda Nussbaum  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, NY 10022  
(212) 687-1980

Brent Barriere  
Susie Morgan  
**PHELPS DUNBAR**  
Canal Place, Suite 2000  
365 Canal Street  
New Orleans, LA 70130-6534

*Counsel for Louisiana Wholesale Drug Co.,  
Inc. and the Class*